

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

PUBLIC SERVICE CO. OF NEW  
HAMPSHIRE

Employer

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL UNION  
1837, AFL-CIO

Petitioner

Case 1-RC-22168  
Case 1-RC-22169  
Case 1-RC-22170

**DECISION AND ORDER**<sup>1</sup>

Public Service Co. of New Hampshire (PSCNH) is an electric utility that provides electric service to customers in New Hampshire. The Union seeks to represent three separate units of working foremen-line (WF-Ls) at PSCNH's Area Work Centers (AWCs) in Hooksett, Milford, and Derry, New Hampshire. PSCNH asserts that the WF-Ls are statutory supervisors and that the three petitions must, therefore, be dismissed.

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<sup>1</sup> Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, the three cases referenced above were consolidated and a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Union contends that the WF-Ls are nonsupervisory employees.<sup>2</sup> I find that the WF-Ls are statutory supervisors based on their authority to effectively recommend promotions and responsibly direct employees and shall, therefore, dismiss the petition.

## **FACTS**

### **PSCNH's Organizational Structure**

PSCNH, which provides electric service to 404,000 customers in portions of New Hampshire, is a wholly owned subsidiary of Northeast Utilities, which has its headquarters in Connecticut. PSCNH is headed by President and Chief Operating Officer Gary Long, to whom Director-Customer Operations Robert Hybsch reports. PSCNH divides its operations into three divisions, the Southern, Western Central, and Seacoast Northern Divisions. Each division is administered by a division manager, who reports to Hybsch, and by a division operations manager, who reports to the division manager. Each division operates four or five AWCs, which cover a certain geographic territory. The larger AWCs are headed by a field supervisor-lines (FSL), while the smaller AWCs are headed by a field supervisor-lines (remote) (FSL-R). In the larger AWCs, the FSL is assisted by a supervisor-distribution lines (SDL).

The three AWCs at issue in this case are part of the Southern Division. The Hooksett AWC is headed by FSL Douglas Frazier, who is assisted by SDL Eric Sutton. The Milford AWC is headed by FSL-R Michael Motta, and the Derry AWC is headed by FSL-R Janet Kelliher.<sup>3</sup> The three FSL/FSL-Rs report to Mark Sandler, the operations manager for the Southern Division, who reports to Southern Division Manager Jeaneen Coolbroth.<sup>4</sup>

Each AWC is responsible for the design, construction, and maintenance of the electric distribution system in its area, as well as for emergency restoration of power during outages. The AWCs are staffed, *inter alia*, by field technicians and field technician specialists who design the jobs, WF-Ls and lineworkers who construct and maintain the system out in the field, stockhandlers, utility workers, meter readers, and clerical employees.

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<sup>2</sup> Should I find that the WF-Ls are nonsupervisory employees, the parties are in agreement, and I find, that the petitioned-for three separate units, one at each AWC, are each an appropriate unit.

<sup>3</sup> Of the three FSLs, only Frazier testified at the hearing. The parties have stipulated that Kelliher and Motta would testify that they have the same responsibilities as Frazier, except that neither of them has an SDL and, unlike Frazier, neither has actually worked as a lineworker or WF-L.

<sup>4</sup> The parties have stipulated, and I find, that Division Operations Manager Mark Sandler, Hooksett FSL Douglas Frazier, Hooksett SDL Eric Sutton, Milford FSL-R Michael Motta, and Derry FSL-R Janet Kelliher are statutory supervisors who should be excluded from any unit found appropriate.

The WF-Ls and lineworkers are generally referred to as the “Line Department.” The WF-Ls report to their FSL-R, FSL, or SDL. There are currently nine WF-Ls and ten lineworkers in Hooksett,<sup>5</sup> six WF-Ls and six lineworkers in Derry, and five WF-Ls and five lineworkers in Milford. Lineworkers begin their careers at an entry level grade, which may be groundworker learner, groundworker, or lineworker III learner, depending on their experience. The goal for lineworkers is to progress over time through several levels of lineworker ratings, until they reach the top-rated level of lineworker I.

### **Bargaining History**

For many years, the Union has represented a bargaining unit of PSCNH employees that includes, *inter alia*, the classifications of lineworkers and meter readers. The unit is covered by a current collective-bargaining agreement effective from 2006 to 2010.

In 1972, the Union petitioned to represent line working foremen employed at PSCNH’s Rochester District and Manchester Division. The Regional Director dismissed the petition on the ground that the line working foremen were statutory supervisors. *Public Service Company of New Hampshire*.<sup>6</sup> Since that time, the parties have treated the WF-Ls in bargaining as supervisors within the meaning of the Act.<sup>7</sup>

### **The WF-Ls’ Role in Responsibly Directing the Lineworkers**

WF-Ls and lineworkers generally work from 7 a.m. to 3 p.m. The WF-Ls start their day in the WF-L room, where they receive their assignments in the form of “job packages,” from the SDL or FSL-R and discuss crew assignments.<sup>8</sup> They work in crews that typically, but not always, consist of one WF-L and one lineworker.<sup>9</sup> The SDL or

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<sup>5</sup> One of the lineworkers in Hooksett is a lineworker II (SW), i.e., a service worker. Service workers perform some, but not all, of the duties performed by other lineworkers at the same grade level. They are not qualified to perform work that entails “rubber gloving” (this involves the use of rubber insulating gloves to protect against electrical shock) over 5 kilovolts. They generally work by themselves in a one-person truck rather than as part of a crew and do work such as meter floats and repairing burned out street lights.

<sup>6</sup> Case Nos. 1-RC-11,986 and 1-RC-11,987 (May 22, 1972). I take administrative notice of the fact that there was no Request For Review of the Regional Director’s 1972 Decision and Order.

<sup>7</sup> For example, the current collective-bargaining agreement covering, *inter alia*, the lineworkers, states, at Article XXIII, that “Full time supervisors above the rank of Working Foreman will not customarily perform the same work which is performed by the employees whom they supervise....” This article has been included in prior contracts.

<sup>8</sup> In Hooksett, it is the SDL who generally assigns the job packages.

<sup>9</sup> In the absence of a WF-L, a crew may consist of two lineworkers, with one “designated in charge.” In addition, for some jobs, lineworkers work solo.

FSL-R is responsible for assigning the lineworkers to work with the WF-Ls and rotates the crew pairings every three to five months.<sup>10</sup> Larger jobs may require multiple crews, in which case the FSL-R or SDL designates one of the WF-Ls to have overall responsibility for the job, and the other WF-Ls report to that WF-L for the duration of the project.<sup>11</sup> Each WF-L has a particular truck assigned to him. The lineworkers look at a board for their assignment and load their gear onto the appropriate truck. The WF-Ls are responsible for charging out any necessary materials from the stockhandler, but may delegate that task to the lineworker. The crews load the material into the trucks and leave the garage by around 7:30 am.

Out in the field, the WF-Ls perform all the duties of a lineworker.<sup>12</sup> One WF-L and one lineworker rotate through “standby” duty in any given week, i.e., they are available to restore power during outages or to handle other issues that come up outside normal working hours.

#### Role in determining the sequence of jobs

Crews may be assigned to work on large projects that take weeks or months to complete, or to a series of small jobs to be completed in a day. In the case of some jobs, the AWC has made an appointment with a customer for a certain time.<sup>13</sup> Hybsch and Hooksett FSL Frazier testified that, except for scheduled appointments or outage trouble, the WF-Ls determine the order in which they will do their assigned jobs, hopefully factoring in the scheduled start date<sup>14</sup> and doing the jobs in an order that requires the least amount of travel.

Hooksett WF-L Timothy Tsantoulis testified that, apart from appointments, the SDL might give him an order in which to do the jobs, but that is not always the case. He tries to do the jobs in the order given, but if he discovers an impediment when he

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<sup>10</sup> There are also day-to-day adjustments in the crew pairings for a variety of reasons, including the skill level required for a job, but the pairings are determined by the SDL in Hooksett or FSL-Rs in Milford and Derry. The WF-Ls play no role in assigning the lineworkers to the crews or in assigning the job packages to the crews.

<sup>11</sup> The FSL-R or SDL designates the WF-L in charge of planned, multi-crew jobs. In the case of emergency responses with multiple crews, the WF-Ls decide among themselves which WF-L is in charge of the whole crew.

<sup>12</sup> WF-Ls are all qualified to “rubber glove” 34.5 kilovolt lines, as are some, but not all, of the lineworker Is. No lineworker IIs are qualified to do this work.

<sup>13</sup> For example, an electrician or a tree trimming company may need a planned outage at a certain time to do their work. The AWCs try to limit the number of scheduled appointments to two a day in Hooksett and one a day in Derry.

<sup>14</sup> Customers are promised a scheduled start date, and the WF-Ls are supposed to call the customers to explain if they are unable to start the job on the scheduled date.

arrives,<sup>15</sup> he can decide whether to wait or to move on to another job. He tries to be as efficient as possible. Derry WF-L Martin Nicolas testified that, years ago, a former FSL-R told him to do the jobs in the order in which he was given them, and he still does the jobs in that manner. Derry WF-L Dennis Urban testified that, apart from appointments or a start date promised to a customer, which is the primary factor, the WF-Ls have discretion regarding the order of the jobs. They normally do the largest job of the day or a job that requires traffic control first, so they can finish it. If there are several little jobs, they start at the farthest point from the AWC and work their way back to the AWC or vice versa. Milford WF-Ls Daniel Jarry and Donald Shepard testified that former FSL-R Donald Nourse used to hand them the jobs in the order he wanted them done. Since Michael Motta became the Milford FSL-R six months ago, he expects the WF-Ls to do the jobs in the order they want, but Jarry still does them in the order he receives them, out of habit. Apart from appointments, start dates promised to customers, or priorities indicated by Motta, Shepard decides the sequence of jobs. In doing this, he takes traffic into account. On cold days, he saves “gloving” jobs for later in the day, when it is warmer. Jobs involving street lights are given a lower priority.

#### Role in conducting tailboard discussions

Prior to beginning each job, the WF-Ls are responsible for conducting what is called a “tailboard” discussion with their crew, in which they discuss the scope of the job, work methods, and any relevant safety issues and necessary precautions. The WF-Ls conduct tailboard discussions orally for routine jobs. Tailboard discussions for jobs that involve more than one crew or that are expected to last more than eight hours must be documented on a tailboard discussion form. Lineworkers sometimes offer suggestions during the tailboard discussion. If there is a safety incident and an improper tailboard discussion contributed to it, the WF-L may be disciplined. If two lineworkers are working together without a WF-L, they have a similar responsibility to conduct a tailboard discussion.

#### Role in determining the sequence of tasks in a job

Hybsch and Frazier testified that there are multiple ways to perform the same job, and WF-Ls have discretion to determine the sequence of tasks that will be performed in connection with each job. For example, a WF-L may decide at the jobsite whether to pull underground wire first or to run overhead wire and transfer a pole first. As another example, the order of the steps to be taken in doing a “pole transfer,” i.e., installing a new pole and transferring equipment from the old to the new pole, may differ based on a number of variables.

The WF-Ls testified that PSCNH provides a safety manual and a standards manual to each worker, which set forth operating procedures for various work processes, as well as safety-related matters. For example, the safety manual outlines how to test a regulator or how to take a regulator out of service, and the steps to follow in climbing a

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<sup>15</sup> For example, another utility or tree-trimming crew may be working in the same area.

pole. WF-L Dennis Urban testified that the sequence of tasks at a job is dictated by common sense, the safety book, and the standards manual. WF-L Mark Chalbeck testified that the job packages instruct him to accomplish certain tasks pursuant to a particular “DTR,” i.e. a standard, in the standard book. For example, the DTR for building a pole gives the measurements for various items on the pole and dictates that he place a cross arm on the pole and come down a certain number of inches to put in a riser. WF-L Tim Tsantoulis testified that neither the safety manual nor a job package tells him where to set up his truck to perform every task he might do, where or how to install jumpers when doing a pole transfer, or which tasks to perform first on a particular job.

#### Authority to change the design of jobs

WF-Ls have authority to change the design of jobs when necessary. Each job is generally designed by a field technician or field technician specialist,<sup>16</sup> who issues instructions to the WF-L in the job package paperwork, which describes how to perform the job and what materials are needed. WF-Ls sometimes perform the jobs in a manner different from the manner described in the job package, if, when they arrive at the site, they find a more efficient approach. This may involve using different materials or performing additional work or less work. FSL Frazier testified that this is a common occurrence and that WF-Ls have authority to make such changes without permission, although, if changes would involve considerably more time or cost, WF-Ls would identify the changes to the FSL. Hybsch testified that WF-Ls will seek approval of deviations from the job package instructions, depending on the magnitude of the change involved.<sup>17</sup> A lineworker performing a single-man job also has authority to change the job as written by a field technician, based on the exercise of the same sort of judgment and experience.<sup>18</sup> At the end of the day, the WF-Ls return a job package for each job, in which they note whether or not the job was constructed as specified, and write notes describing the work they have done.

Four WF-Ls acknowledged that they do sometimes change the design of jobs if it would be safer or more efficient to do so. Hooksett WF-Ls Mark Chalbeck and Timothy Tsantoulis testified that they need to get permission from the FSL or SDL to make changes that require more material or man hours. Milford WF-L Daniel Jarry testified that, if he is going to change a job in a way that requires more hours or material, he

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<sup>16</sup> Large, multi-crew jobs are designed by project coordinators, who also meet with the customers, order materials, and deal with licenses, easements, and cost. The project coordinators may have ten to fifteen such projects going at a time. The WF-L who is in charge of all the crews at the job reports to the project coordinator for the duration of the project. The project coordinator may check in with the WF-L once a day, but the WF-L is primarily in charge of the physical construction of the job.

<sup>17</sup> For example, WF-Ls will not seek approval to use a different size cross arm on the job, but will seek approval if they need to run another three-mile extension.

<sup>18</sup> Lineworkers are permitted to do only a limited type of work alone. They do not work alone on big jobs or make changes that call for big ticket items.

notifies the FSL-R, who may question him about the change, but who usually accepts his recommendation.

WF-Ls are also assigned to perform “Build It First” jobs, in which they are told to construct a job, i.e., reach an end result, without instructions or a site visit by a field technician. For those types of jobs, which usually involve more than one crew, the WF-Ls decide what needs to be done and how much material is needed, track the man hours, and arrange for planned outages. WF-Ls are assigned Build It First jobs for simple tasks, such as service removal, but also for more complex projects. For example, FSL Frazier assigned a WF-L to patrol a several-mile section of a main power line and to do whatever needed to be done to bring the line up to standards at each stop along the way, including requisitioning the necessary materials and manpower. A lineworker working alone, which happens sometimes, may also be assigned to perform a Build It First job.

#### Role in training lineworkers and assigning tasks to them

WF-Ls are responsible for training lineworkers as they progress through the various grades to eventually become lineworker Is. The majority of the training consists of on-the-job training by the WF-Ls.<sup>19</sup> Hybsch testified that new lineworkers are assigned a mentor who works with them throughout their progression and is available to answer questions.<sup>20</sup> Hooksett WF-L Timothy Tsantoulis testified that he has never mentored a lineworker or been mentored himself, as part of a so-called mentoring program, as some AWCs have such a program and some do not. He agreed that one of the duties of the WF-Ls is to train the lineworkers, but testified that higher level lineworkers also coach lower level lineworkers as part of their duties, teaching them how to rubber glove, how to plant a pole, or where a crossbar goes. Milford WF-L Donald Shepard testified that, when there are three-person crews, the junior lineworker receives on the job training from both the WF-L and the more experienced lineworker.

WF-Ls assign tasks to the lineworkers on their crews. Because of their responsibility for training lineworkers, WF-Ls are supposed to look for opportunities for lineworkers to practice skills in which they are not yet proficient. At the jobsites, one person typically goes up in the bucket, while the other person stays on the ground handling the material needed by the person in the bucket, answering the radio, and watching traffic. Hooksett WF-L Timothy Tsantoulis testified that, if he is working with a seasoned lineworker, he is likely to go up in the bucket himself, because he prefers it. When he is working with young lineworkers who need the experience, he is likely to send them up in the bucket. As for other tasks, he just tries to divide them up fairly, so neither person is doing all the work on a hot day. Gloving work is supposed to be split up

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<sup>19</sup> Lineworkers attend a company training school for three weeks in their first year and for two weeks a year after that.

<sup>20</sup> As noted above, lineworkers are assigned to work with the various WF-Ls at the AWC in rotation, so the WF-L who serves as their mentor is not necessarily the WF-L with whom they are currently working.

equally. Lineworkers make the same sort of decisions when they are acting as the person designated in charge. Derry WF-L Dennis Urban testified that lineworkers love being in the bucket and there is an unwritten rule that the junior worker does most of the physical labor and the WF-L helps him. When there are multiple crews on a job, they all banter back and forth and come to an agreement; sometimes WF-Ls assign tasks and sometimes the crews volunteer to perform tasks. WF-L Daniel Jarry testified that his crew interacts as a team, but it is ultimately his responsibility to decide who goes up in the bucket. He usually lets seasoned lineworkers decide what they want to do themselves, but sends inexperienced lineworkers to work in the bucket, where he directs them step by step. If a task is too complex for an inexperienced lineworker, Jarry performs it himself. Sometimes there are two buckets up in the air, and either Jarry or another lineworker working in one bucket demonstrate the task to an inexperienced lineworker in the second bucket.

#### Role regarding work in inclement weather

In certain weather conditions, it is unsafe for the crew to continue working.<sup>21</sup> Under the collective-bargaining agreement,<sup>22</sup> WF-Ls make the decision as to whether or not their crews shall stop work due to inclement weather. According to a memo of understanding, the WF-L makes the final decision in the event of a difference of opinion between him and the crew. Hooksett WF-L Timothy Tsantoulis testified that he has never had a disagreement with his crew about the weather and that, if the weather is questionable, he and the lineworker working with him come to an agreement. The decision to stop work has no impact on lineworkers' pay, as they are paid in any event, although the decision has financial ramifications for PSCNH and its customers. If a WF-L determines that it would be unsafe to work outdoors due to the weather, the crew returns to the AWC to perform other duties.

#### WF-Ls' accountability for the performance of the lineworkers

PSCNH safety rules state that all company employees have the same responsibility for safety and that working foremen shall not be required to perform work to the extent that it interferes with the proper and safe direction of their crews. The rules further state that accountability for an accident shall be placed on the supervisor/working foreman unless investigation shows it to be due to conditions or circumstances beyond their control. Hybsch testified that if an accident occurs that a WF-L should have prevented, or the WF-L fails to enforce safety rules, the WF-L will be held accountable even if he, himself, did not violate the safety rule. In this regard, the WF-L would be disciplined, and the incident would be reflected in his performance appraisal and

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<sup>21</sup> Hooksett WF-L Timothy Tsantoulis testified that it is unsafe to handle energized conductors in the rain, and conditions such as high wind, excess humidity, or extreme cold or heat affect high voltage gloving.

<sup>22</sup> Article XIII, Section 1.



incentive bonus.<sup>23</sup> He testified that, in contrast, if a WF-L working in a bucket violated a safety rule, the lineworker would not be held accountable for the unsafe act of his WF-L.

PSCNH submitted into evidence three disciplinary letters issued to WF-Ls as evidence of their accountability for the safety of the lineworkers. On January 9, 2007, Hooksett WF-Ls Scott Johnson and Mark Chalbeck were suspended for three days without pay for an October 2006 incident in which they failed to ensure that every employee knew and understood the planned switching task and because they did not ensure that prescribed switching and tagging procedures were followed during the planned work.<sup>24</sup>

On August 15, 2007, WF-L Patrick Bischof from the Keene AWC was issued a letter of warning and lost eligibility for a third quarter safety incentive payout due to an October 2006 incident. The letter of warning stated that Bischof had never placed employees in unsafe working conditions, but he had violated a safety rule concerning tailboard job briefing, in that he did have a tailboard briefing with one of his co-workers, but the rule states that “all” workers shall understand the procedures to be followed. Hybsch testified that his understanding of the warning letter is that Bischof did not include everyone at the job site in the tailboard briefing, so that an unsafe act could have followed.

WF-Ls receive an annual appraisal called an “Employee Final Review,” in which their superiors rate them numerically with respect to meeting various goals, including line crew productivity, the system’s average restoration time, and customer satisfaction for the AWC.<sup>25</sup> In their Final Reviews, WF-Ls are also rated on the degree to which they maintain or reduce inclement weather time charges and manage “capitol” jobs<sup>26</sup> in the field to budget. They are also rated on the quality of their communication with subordinates and the degree to which their treatment of subordinates is fair and equitable. They are rated on their work in improving the skills of progressing lineworkers and on the thoroughness of their Progression Appraisals of lineworkers. The WF-Ls receive annual merit raises that vary depending on the scores in their Final Reviews.

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<sup>23</sup> WF-Ls receive merit increases based on their performance appraisals. They also receive quarterly incentive bonuses that are based 50 percent on safety. WF-Ls receive no quarterly incentive payout if they have been disciplined for safety reasons that quarter.

<sup>24</sup> Hybsch testified at one point that, within the last year, there was an incident in Hooksett involving WF-Ls Scott Johnson and Mark Chalbeck, in which a WF-L violated a tagging rule, for which the lineworker I on the crew was not disciplined, and a lineworker II did an unsafe act at the direction of a WF-L, for which the WF-L, but not the lineworker, was disciplined. It appears that he was referring to the October 2006 incident for which Johnson and Chalbeck received the three-day suspension.

<sup>25</sup> Restoration time refers to the length of time it took to restore power to customers after trouble calls were received. The customer satisfaction index is based on a customer survey.

<sup>26</sup> This refers to a job that involves installing new equipment, such as a pole or conductor.

## **The WF-Ls' Role in Assigning Lineworkers to a Time**<sup>27</sup>

### **Role in preparing time sheets**

At the end of the work day, the WF-Ls complete paperwork associated with the jobs and a daily time sheet showing the hours their crew worked, which is used for purposes of payroll and productivity measures. The FSL-R or SDL reviews and approves the time sheets. WF-Ls do not track absences and play no role in granting time off, unless they are filling in for the FSL, SDL, or FSL-R. Lineworkers who are unable to come to work contact the FSL-R or SDL.

### **Role in authorizing overtime**

WF-Ls have limited power to authorize overtime beyond the regular 7 a.m. to 3 p.m. workday. If a WF-L is working on a capitol project, which, as noted, involves the installation of new equipment, and determines that it would be more cost effective for his crew to work an extra hour or hour and a half in order to finish the job, thus avoiding the need for the crew and/or police officer to come back the following day and set up the job again, the WF-L may authorize the overtime work. The record does not reveal how often the WF-Ls in Hooksett, Milford, or Derry have done this. WF-Ls cannot require lineworkers to stay past 3 p.m. in these circumstances. If a lineworker is unable or unwilling to work the overtime, the WF-L may call a clerical employee at the AWC to ask for assistance in finding a volunteer, or call another crew nearby for a volunteer.

In the case of trouble calls, both WF-Ls and lineworkers, who sometimes answer trouble calls alone, have authority to remain on the job on an overtime basis in order to resolve the problem. If a trouble call comes in during the regular workday, a WF-L cannot require a lineworker to work overtime to finish the trouble call unless he has first exhausted other options. The WF-L must first try to find another lineworker who is willing to assist him. If no other lineworker is available, the lineworker with the least amount of overtime may be required to stay, pursuant to the collective-bargaining agreement.

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<sup>27</sup> In its post-hearing brief, PSCNH discusses the role of the WF-Ls in assigning overtime work in the section of its brief devoted to their authority to responsibly direct, and it discusses both assigning overtime and preparing timesheets in the section devoted to secondary indicia of supervisory authority. I find that assigning overtime and preparing time sheets pertain, rather, to authority to assign to a time, as discussed by the Board in *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 4 (2006), and *Golden Crest Healthcare Center*, 348 NLRB No. 39, slip op. at 3-4 (2006). Accordingly, I have considered those factors in the context of the Section 2(11) indicium of assignment.

## **The WF-Ls' Role in Recommending Progression Within the Lineworker Classification**

### **Progression as a lineworker**

As noted above, lineworkers begin their careers at an entry level grade, which may be groundworker learner, groundworker, or lineworker III learner, depending on their experience.<sup>28</sup> For lineworkers, the goal is to progress over time through several levels of lineworker ratings, after meeting certain criteria, until they reach the top-rated level of lineworker I. The progression for lineworkers after entry level includes the classifications of lineworker III, lineworker II learner, lineworker II, lineworker I learner, and, finally, lineworker I.

Under the collective-bargaining agreement, lineworkers receive a pay increase each time they advance to the next level in the progression.<sup>29</sup> Pursuant to the collective-bargaining agreement,<sup>30</sup> lineworkers who fail to qualify for promotion to the next level within the usual time are granted up to an additional 50 percent of the usual time in that step in which to qualify for progression, and their progress is to be assessed no less frequently than every 15 days. Lineworkers who still fail to qualify after an extended qualifying period are either returned to the last position they held before becoming lineworkers or placed into another non-lineworker position.

### **Criteria for progression**

In order to progress from one level to the next, lineworkers are required to meet several criteria. They must have worked for a certain period of time set forth in a guideline (six months or a year, depending on the level) at the prior level. The actual time may vary, based on the lineworker's ability or inability to demonstrate the requisite skills; some lineworkers have advanced ahead of that schedule and others have been required to serve more time in grade. They are required to attend formal progression schools administered by the PSCNH Training and Methods Department at various points within the progression process. They are also required to possess a commercial driver's license (CDL).

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<sup>28</sup> Entry-level lineworkers are typically drawn from the ranks of the meter readers, who are awarded the positions pursuant to a contractual bidding procedure, under which the most senior qualified bidder gets the job. It appears that the WF-Ls do not play a role in this process.

<sup>29</sup> The Schedule of Maximum Wages contained in the collective-bargaining agreement reflects different hourly rates for the lineworker I, II, and III positions. There is also a separate pay scale for the "learner" grades, e.g., a pay differential between a lineworker II learner and a lineworker II, although this scale is not published in the contract's wage schedule.

<sup>30</sup> Article X, Section 6.

In addition to the above requirements, in order to advance to the next level, lineworkers must also receive 1) a recommendation to advance from the WF-Ls with whom they have worked, who complete a “Lineworker Progression Appraisal” form, 2) a positive recommendation from their FSL or SDL, who completes a “Supervisory Lineworker Progression Appraisal Justification” form, and 3) a positive “Work Experience/Comprehension” form, which is completed by the WF-L who is assigned to be their mentor.<sup>31</sup> The FSL forwards the relevant documentation to the operations manager, who makes sure that all of the criteria for advancement have been met. At some levels of the progression, meeting all of these criteria is a prerequisite to being permitted to take a written test administered by the Training and Methods Department, the passing of which is the final hurdle to advancing to the next step.<sup>32</sup> At other levels, a positive Progression Appraisal is required to advance, but no written test is required.<sup>33</sup> It is possible for lineworkers not to progress, notwithstanding a WF-L recommendation to advance, because they have failed to meet one of the other criteria, e.g. they fail to pass a necessary written test. It is not possible to progress, however, without an affirmative recommendation from a WF-L.<sup>34</sup>

#### Lineworker Progression Appraisals completed by the WF-Ls

Since lineworkers may work with several different WF-Ls,<sup>35</sup> several WF-Ls who have worked with a lineworker may each complete their own Lineworker Progression Appraisal, or they may fill out joint Appraisals.<sup>36</sup> On the form, the WF-Ls rate the lineworkers on a scale from zero to four with respect to various attributes, and write comments. At the end of the form, the WF-Ls are asked to state whether they recommend that the lineworkers progress to the next grade, by rating the lineworkers on a scale from one to five, with one meaning “no” and five meaning “yes” and by adding a comment. They may recommend that the lineworkers progress to the next level, that they

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<sup>31</sup> These forms will be discussed in greater detail below.

<sup>32</sup> The written tests test the lineworkers’ knowledge of procedures and “book knowledge.”

<sup>33</sup> Lineworkers must pass a written test to become a lineworker III, a lineworker II learner and a lineworker I learner. No written test is required to become a lineworker III learner or a lineworker II or lineworker I.

<sup>34</sup> Hooksett FSL Douglas Frazier testified that he has never allowed progression at any step in the absence of an affirmative progression appraisal by a WF-L and a favorable work experience comprehension form filled out by a WF-L. Hooksett WF-L Timothy Tsantoulis also testified that he is not aware of any lineworker who progressed to the next level without an affirmative recommendation from a WF-L.

<sup>35</sup> As noted above, lineworkers are rotated to a different WF-L every three to five months, on average, to get different training experiences.

<sup>36</sup> PSCNH submitted into evidence Progression Appraisal forms for most of the lineworkers currently employed at the three AWCs at issue.

progress at an accelerated rate, that they need more training in certain areas before progressing,<sup>37</sup> or that they are not going to make it as lineworkers.

Hooksett FSL Frazier testified that he has never told a WF-L to change a Progression Appraisal. He has sought clarification from WF-Ls, as the views of multiple WF-Ls on the same lineworker may conflict, so he tries to ascertain which WF-L has worked with the lineworker at issue for the longest period of time.

Supervisory Lineworker Progression Appraisal Justification  
completed by the FSLs

After reviewing the Progression Appraisals completed by the WF-Ls, the FSLs complete a Supervisory Lineworker Progression Appraisal Justification form, in which they recommend whether or not the lineworker should progress to the next grade. Director-Customer Operations Hybsch testified that the FSLs follow the recommendations of the WF-Ls 80 percent of the time, that the FSLs rely almost exclusively on the WF-Ls' recommendations, and that he was not aware of FSLs evaluating lineworker deficiencies through first-hand observation.<sup>38</sup> Hooksett FSL Frazier testified that, in completing the Supervisory Progression Appraisal, he relies 90 percent on the information provided in the WF-Ls' Progression Appraisals,<sup>39</sup> as he has limited opportunities to observe the lineworkers himself. In this regard, he gets out in the field to observe crews less than 20 times a year and may visit one of PSCNH's training facilities to see how lineworkers are progressing. As a former lineworker and WF-L, himself, Frazier feels he has the ability to assess the lineworkers' abilities. In contrast, the current Derry and Milford FSL-Rs, Janet Kelliher and Mike Motta, are not themselves former lineworkers or WF-Ls. Frazier testified that, at his AWC, he has never recommended progression without an affirmative recommendation from the WF-Ls, and that lineworkers have always been given the chance to take the written test when the WF-Ls said they were ready to progress.<sup>40</sup>

PSCNH submitted only one Supervisory Lineworker Progression Appraisal Justification into evidence, involving Milford lineworker II learner Josh Turransky. In about January 2007, the Milford WF-Ls asked to meet about Turransky with former

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<sup>37</sup> An FSL may arrange for a lineworker who needs additional training to go back to school or to go to another AWC for a particular kind of training experience.

<sup>38</sup> Hybsch testified that the FSLs and SDLs go into the field to observe the lineworkers' work at least once a month, but that they are not in the field very often.

<sup>39</sup> Apart from the WF-Ls' appraisals, he relies on attendance information and "after hours response to restoration."

<sup>40</sup> Frazier, who has been the FSL in Hooksett since 2005 and was the FSL-R in Derry from 2004 to 2005, testified that he has never seen a Progression Appraisal in which the WF-L recommended that a lineworker not progress or that progression be delayed, although some have stated that the lineworker needs work.

FSL-R Donald Nourse. They had reservations about advancing Turransky and were concerned that he did not have the ability to be on call alone, after-hours and weekends, which is required of lineworker IIs, but they did not want Turransky to lose his job. Nourse did not tell the WF-Ls what to put in their appraisals, but he told them that Turransky would have to leave the department if he did not cut it in three months and that the WF-Ls would be asked to evaluate him every 15 days.

Five WF-Ls thereafter completed Progression Appraisals of Turransky in January and early February 2007. All five rated Turransky a “2” with respect to whether they recommended that he progress to the next grade. In their comments, two recommended a three-month extension as a lineworker II learner, one recommended a three to six month extension, and two did not make a specific recommendation in the comment section.<sup>41</sup>

On February 15, 2007, Nourse met with Turransky and sent him a letter notifying him that, by contract, his qualifying period would be extended for another three months,<sup>42</sup> and he would receive written appraisals every 15 days. On the same date, Nourse completed a Supervisory Lineworker Progression Appraisal Justification, in which he noted Turransky’s poor appraisals by the WF-Ls. In the Supervisory Appraisal, Nourse also noted that he had reviewed certain questions about circuits with Turransky to get a feel for his knowledge, that Turransky had answered most of those questions without difficulty, that he had reviewed One-Line (wiring) diagrams with Turransky, which are relevant to the on call responsibilities of a lineworker II, and that Turransky had admitted he has a limited understanding in that area. Nourse wrote that he recommended a 90-day extension for Turransky “[b]ased on Progression appraisals and my observation.” As to Nourse’s observations, WF-L Donald Shepard testified that Nourse went to observe Turransky on the job a couple of times prior to the February 15th meeting, and four or five times thereafter, during the period that Turransky was undergoing frequent reviews.<sup>43</sup>

The WF-Ls thereafter completed frequent Progression Appraisals, and by April 2007, the WF-Ls had submitted six Appraisals in which they rated Turransky a “3” with respect to their recommendation to progress, and WF-L Shepard commented that he was doing well and ready to progress. In May 2007, Turransky was advanced to lineworker II. WF-L Daniel Jarry testified that, at the time of Turransky’s progression, Jarry told Nourse orally that Turransky was ready to be a lineworker II, but that he was not ready to be on call by himself. Jarry did not include this caveat in the written Progression

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<sup>41</sup> One WF-L wrote that Turransky needed more one-on-one training and one wrote that he needed more experience.

<sup>42</sup> Three months is 50 percent of the usual six-month time in grade for lineworker II learners.

<sup>43</sup> The record does not reveal whether Nourse was a former lineworker or WF-L himself.

Appraisal he completed.<sup>44</sup> Nourse overrode Jerry's oral recommendation and permitted Turransky to be on call. There is a longstanding past practice that lineworker IIs are placed in the rotation for on call/standby duty.

WF-L Donald Shepard testified that, since that time, Turransky has regressed. Shepard and four other WF-Ls have told Turransky informally that he is not cutting it and that he would not make it to lineworker I. Turransky has asked the current Milford FSL, Michael Motta, to find him a new career path at PSCNH and continues to work as a lineworker II until another position can be found for him.

Derry WF-L Martin Nicolas testified that, in 2003, the WF-Ls in Derry told former FSL Mike Lee, as a group, that lineworker Chris D'Amico should be advanced from lineworker III to lineworker II more quickly than the normal time. The WF-Ls completed Progression Appraisals to that effect, although Nicolas is not sure if the recommendation to advance D'Amico on an accelerated basis was unanimous. D'Amico did eventually progress to lineworker II, but not on an accelerated basis.

#### Work Experience/Comprehension forms

According to Hybsch and a company policy that describes the criteria for progression, a mentor's completion of the Work Experience/Comprehension form is a prerequisite for progression testing. The form lists three pages worth of skills and sets forth, for each skill, whether a lineworker at a particular level is expected to be rated as "T – trained (completed formal training)," "1 – exposed – either seen or done in limited quantity," "2 – experienced – completed task several times," or "3 – proficient – meets all expectations." For example, a groundworker is expected to be exposed to transformer installation, a lineworker III is expected to be experienced at it, and lineworkers II and III are supposed to be proficient at it. The WF-Ls/mentors who complete the form rate the lineworkers with respect to each skill as a T, 1, 2, or 3.<sup>45</sup>

Milford WF-L Donald Shepard testified that he filled out the Work Experience/Comprehension form for lineworker Josh Turransky based on his own observations of Turransky for some skills, based on conversations with other WF-Ls for other skills, and based on asking Turransky himself what he had done. He made some mistakes in completing the form, as he thought when he completed it that "T" was the highest rating, but now understands it is the lowest rating. He testified that he does not understand what the forms are used for, that they are used to track what a lineworker

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<sup>44</sup> None of the April 2007 Progression Appraisals submitted by the other WF-Ls suggested that Turransky was not ready to be on call by himself, nor is there any evidence that any of them made similar oral recommendations to Nourse.

<sup>45</sup> Numerous completed forms were submitted into evidence. In some cases the WF-L initialed each skill, apparently noting that the lineworker had achieved the required level of proficiency as preprinted on the form. In most instances the WF-Ls filled it out numerically.

needs to work on, and that they are not used to judge whether a lineworker may take the test for the next level.

Milford WF-L Daniel Jarry testified that, as a mentor, he fills out the Work Experience/Comprehension form every three months for his lineworker, although he may not have worked with him for all of that three-month period. Jarry interviews the lineworker and fills it out based on the lineworker's answers. In January 2006, Jarry filled out a Work Experience/Comprehension form for lineworker Lawrence Schwab, who was advanced to the grade of lineworker I, even though Jarry had rated him only a "1" or "2" for certain skills for which a lineworker I should be rated a "3." However, Jarry did recommend in Schwab's Progression Appraisal that same month that Schwab was ready to become a lineworker I, although he needed more experience in certain tasks.

### **The WF-Ls' Role in Recommending the Promotion of Lineworkers to Working Foreman Positions**

WF-Ls complete an annual performance appraisal of lineworkers, which is called an "Employee Development Report." In the case of a lineworker who has worked with several WF-Ls, the WF-Ls may write joint or separate Reports, or the working foreman who predominantly worked with the lineworker may write it. In the Report, the WF-Ls rate the lineworkers on a scale from one to five with respect to various criteria and write an explanation for each rating. The FSLs review and sign the Employee Development Reports, and the WF-Ls meet with the lineworkers to review the report. There was evidence of a few instances in which an FSL or SDL questioned a WF-L's rating of a lineworker.<sup>46</sup> The Employee Development Reports have no effect on the lineworkers'

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<sup>46</sup> FSL Doug Frazier testified that once or twice he has questioned a score that was unsubstantiated or asked for clarification. For example, after noticing that a lineworker had been given a rating of "4" for communication skills, Frazier reminded the WF-L who gave the rating of a meeting at which Frazier had been present, in which the lineworker had used offensive language. This prompted the WF-L to change the Report. Frazier testified that he does not recall ever challenging or overruling a WF-L's assessment of a lineworker's performance or conduct in the field. Hooksett WF-L Tim Tsantoulis testified that, within the last three years, former SDL Donald Briand told him to rate lineworkers in the middle and questioned him if he scored lineworkers too high, saying "You don't want to do that." No one has questioned his ratings since Briand left in the summer of 2006. Milford WF-L Daniel Jarry testified that when he was a WF-L at the Nashua AWC from 2000 to 2004, he once changed a rating for attendance at the request of his FSL and once changed a rating for teamwork at the request of his SDL.

Hooksett WF-L Mark Chalbeck testified that when former SDL Briand handed him an Employee Development Report for lineworker Jim Cartmill, Briand told him that their district had a "bad egg" that they needed to get rid of, so Chalbeck gave Cartmill a less than stellar evaluation. Chalbeck later conceded, however, that the comments he wrote in the 2004 Employee Development Report were true, including a comment that Cartmill had a problem while working from bucket trucks and off a pole. Cartmill, himself, wrote in the employee comment section that he had a fear of heights that he felt he would be unable to overcome, that he would shake while in the bucket, and that he would be looking for a different job. Hooksett WF-L Timothy Tsantoulis



wage increases, which are set by their collective-bargaining agreement. The FSLs do consider them, however, in determining whom to promote to WF-L positions.

When there is an opening for a WF-L position, the job is posted. The FSL at the AWC with the opening asks the current WF-Ls to evaluate any candidates from that AWC on a “Working Foremen Selection Process” form, in which they rate the candidates on a scale from 0 to 5 with respect to various criteria and may make a recommendation in a comment section. If there are any applicants from other AWCs, the FSL requests the Employee Development Reports completed by the WF-Ls at that AWC. The FSL and, possibly, the SDL interview the candidates.<sup>47</sup> Then the FSL completes a Candidate Comparison/Decision Worksheet in which he or she makes a recommendation to the operations manager, who makes the final decision. The operations manager does not interview the candidates himself.

There was testimony concerning three instances in which a lineworker was promoted to WF-L in Hooksett. In one instance, lineworkers Tom Valiton and Mark Carignan were candidates for a WF-L position. Hooksett WF-L Timothy Tsantoulis testified that all of the WF-Ls in Hooksett voiced their opinion that Carignan should get the job, but Valiton was awarded the position.<sup>48</sup> Carignan was awarded the next WF-L position in Hooksett in 2006. It appears that Carignan was the only candidate, and the WF-L-s from Hooksett all recommended him.<sup>49</sup> After that, lineworker Adam Brock, from the Epping AWC, and an outside candidate, Ben Stacy, applied for a WF-L slot in Hooksett. Frazier did not solicit the views of the Hooksett WF-Ls about Brock, because he was from another AWC. Nonetheless, two Hooksett WF-Ls approached Frazier to recommend Brock.<sup>50</sup> Frazier testified that he took what they said into account, but that, after interviewing the candidates and reviewing Brock’s Employee Development Reports, in which the Epping WF-Ls did not speak favorably of Brock,<sup>51</sup> he hired Stacy.

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testified that he once questioned Cartmill if he thought this was the right career for him, due to his fear of heights, and that Cartmill decided to leave the lineworker progression.

<sup>47</sup> FSL Frazier testified that, at his AWC, a WF-L has never sat in on an interview with candidates for a WF-L position.

<sup>48</sup> It appears, although it is not entirely clear from the record, that both candidates were from the Hooksett AWC.

<sup>49</sup> Frazier testified that, although there was only one applicant from within Hooksett, that person would not automatically be awarded the job, as PSCNH will hire from outside the company as well. The Candidate Comparison worksheet Frazier completed, however, lists only one candidate, Carignan.

<sup>50</sup> The record does not reveal how they had knowledge of Brock’s qualifications.

<sup>51</sup> Frazier did not personally speak with the WF-Ls from Epping.

Derry WF-L Martin Nicolas testified that in 2001 there were two lineworkers from Derry who were candidates for a Derry WF-L slot, Douglas Frazier and William Sullivan. Five of the Derry WF-Ls recommended Frazier and one recommended Sullivan, but then-FSL Gary Foye appointed Sullivan, without explanation.

### **The WF-Ls Role in Discipline**

There is no evidence that WF-Ls have authority to discipline employees, and the parties have stipulated that they do not make recommendations for discipline. WF-Ls sometimes participate as members of accident investigation teams, which may include a Safety and Methods Supervisor, FSL, SDL, or field technician specialist.<sup>52</sup> The role of accident investigation teams is limited to determining if an accident occurred as a result of a violation of PSCNH safety rules. In the event that they find a safety rule violation, the accident investigation teams do not recommend discipline. Rather, they refer their findings to a local supervisor, such as an FSL, who may make a recommendation for discipline to a discipline review committee. There is no evidence that WF-Ls participate in the discipline review committees.

### **The WF-Ls Role in Substituting For FSLs or SDLs**

WF-Ls substitute for FSLs, FSL-Rs, or SDLs when they are on vacation or otherwise absent. They perform the function of assigning work when they do so.

### **Secondary Indicia**

FSLs and SDLs are salaried, exempt employees. WF-Ls are salaried and non-exempt.<sup>53</sup> The WF-Ls' current base salary ranges between \$1291 to \$1365 per week. Lineworkers are hourly paid and, according to the contractual wage schedule, their pay ranges from about \$23 to \$30 per hour.<sup>54</sup> Raises for WF-Ls are based on merit, as reflected in their Employee Final Reviews. The lineworkers' Employee Development Reports have no impact on the lineworkers' wages, which are established in collective-bargaining. Both the WF-Ls and lineworkers participate in a PSCNH incentive program, under which employees receive a payout if PSCNH achieves certain goals, but the WF-L payout is higher than that of the lineworkers.

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<sup>52</sup> Field technicians are apparently nonsupervisory employees. It appears that lineworkers do not participate in accident investigation teams, because the Union did not want its members to be part of teams that might find fault in the conduct of its members.

<sup>53</sup> At the hearing, the parties disputed whether WF-Ls are actually salaried and whether they are invariably paid the same salary, even if they need to take time off for personal reasons. The parties stipulated, and I find, that there are instances of unknown quantity in which WF-Ls have received unpaid personal time off, resulting in pay less than their quoted salary.

<sup>54</sup> Thus, the annual pay for WF-Ls ranges from \$67,132 to \$70,980, and the annual pay for lineworkers ranges from \$47,840 to \$62,400, assuming a 40-hour work week.

Both the WF-Ls and the lineworkers are paid overtime pay in the same multiples for various types of overtime situations. FSLs and SDLs are paid overtime in certain situations, but at a different rate from that of the WF-Ls and lineworkers. WF-Ls are paid in the same manner as the lineworkers with respect to certain other premiums and benefits: WF-Ls receive the same after-hours meal allowance, clothing and boot allowance, and pay when away from home as the lineworkers, the same premium pay for working on their second consecutive day off, the same rest time pay, the same standby pay when they are on call for emergencies, and the same storm rate premium.

In 2007, WF-Ls were required to attend a two-day supervisory training event, which included training in how to conduct effective performance reviews, as well as training in some supervisory areas that were not relevant to their responsibilities. Certain Northeast Utilities policies make reference to the responsibility of its supervisors to perform certain supervisory duties that do not apply to the WF-Ls. As for management meetings, Hooksett FSL Frazier testified that, three to four times a year, he holds meetings with the SDL and the WF-Ls, in which they discuss matters such as financial goals, budget items, performance figures, and the supervisory training program.

Unlike the lineworkers, WF-Ls have a designated room at the AWCs, with desks. WF-Ls do not have access to computers or the PSCNH intranet. PSCNH has recently changed its vacation policy, so that WF-Ls and lineworkers are now in separate pools for purposes of limits on the percentage of individuals at the same AWC who may be out on vacation at the same time.<sup>55</sup>

### **Lineworkers Acting as Designated In Charge**

Lineworkers sometimes act in the capacity of a WF-L, when the WF-L is absent, referred to as being the “designated in charge.” Lineworkers who are designated in charge receive premium pay for doing so and have the same responsibility as WF-Ls with respect to leading tailboard discussions, directing the crew, completing paperwork related to the jobs, and completing time sheets. Lineworkers acting as designated in charge do not complete Progression Appraisal forms, Employee Development Reports, or Work Experience Comprehension forms, do not have input into the selection of new WF-Ls, and do not serve as acting FSL or SDL. It appears from the record that lineworkers acted in the capacity of designated in charge only a small percentage of their time in 2006 and 2007.

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<sup>55</sup> No more than 25 percent of WF-Ls at the same AWC may be on vacation at the same time. Until this change, WF-Ls and lineworkers had been in the same pool for purposes of this rule.

### **Evidence Concerning Working Foremen Who Are Included in Bargaining Units at Other Utility Companies**

I specifically affirm the Hearing Officer's ruling, in which he properly declined to permit the Union to present witnesses to testify about the duties of working foremen/lead lineworkers at three other utility companies, specifically, lead linemen at Connecticut Light and Power, working foremen at New Hampshire Electric Co-op, and lead lineworkers at Unitil Corporation. The Union submitted an offer of proof in which it asserted that, if witnesses from these other utility companies were permitted to testify, they would testify, in essence, that the working foremen/lead linemen at these other companies perform duties that are similar to those of the WF-Ls at PSCNH, that they are not considered to be supervisory employees by those other companies, one of which, like PSCNH, is a wholly owned subsidiary of Northeast Utilities, and that they have been included in bargaining units for years. Citing *Tri-County Electric Cooperative*, 237 NLRB 968, 969 (1978), the Union asserts that this evidence should have been allowed, because the Board considers prevailing area practice in making determinations of supervisory status. In *Tri-County Electric Cooperative*, the Board held that, in decertification cases, it will direct an election in a unit as modified by contract and found that since the category of line foremen had been explicitly included in the parties' own bargaining unit by contract, they were not supervisors and their challenged ballots should be counted. Thus, in *Tri-County*, the Board looked at the parties' own practice, whereas here, the Union would have me substitute the practice of other parties. In this regard, I note that Northeast Utilities is not a party to this proceeding. There is no suggestion in *Tri-County Electric Cooperative* that the practice at other companies is a factor in determining supervisory status or that this principle applies to representation cases that do not involve decertification petitions. Accordingly, I will not consider it in this case.

### **DISCUSSION<sup>56</sup>**

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. *Chicago*

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<sup>56</sup> As noted above, in a 1972 Decision and Order involving the same parties as in the present case, the then-Regional Director for Region 1 found that PSCNH's line working foremen were statutory supervisors. There was no request for review of that Decision and Order, which, accordingly, has no precedential value in the absence of review by the Board. *The Boeing Company*, 337 NLRB 152, 153 fn. 4 (2001). Further, I note that the prior Decision and Order was based upon facts and law that are now 36 years old. Therefore, in concluding in the present case that the WF-Ls are statutory supervisors, I do not rely on that prior decision, and have made my determination based exclusively on the current authority of the WF-Ls.

*Metallic Corp.*<sup>57</sup> The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. *New Fern Restorium Co.*<sup>58</sup> The burden of proving supervisory status rests on the party alleging that such status exists. *NLRB v. Kentucky River Community Care.*<sup>59</sup> The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co.*<sup>60</sup>

### **Effective Recommendation of Promotions**

I find that the WF-Ls effectively recommend the promotion of lineworkers from one level to the next within the lineworker progression, by virtue of their recommendations in the Lineworker Progression Appraisal forms. I note, at the outset, that the Board has held that when an evaluation does not, by itself, affect the wages and/or job status of the employees being evaluated, the individuals performing such an evaluation will not be found to be statutory supervisors. *Harborside Healthcare, Inc.*<sup>61</sup> Here, the WF-Ls' appraisals clearly affect both the wages and job status of the lineworkers, as a positive recommendation from WF-Ls is necessary to be eligible for a promotion and pay increase, while a negative recommendation from the WF-Ls results in no wage increase, and may ultimately lead, essentially, to an involuntary transfer out of the lineworker progression. The Union asserts that the WF-Ls' recommendations in the Progression Appraisals are not effective because the WF-Ls' assessment is only the first step in a multi-step process. I find, in disagreement, that the fact that the lineworkers must also meet other criteria in order to be promoted — serve a certain time in grade, receive a positive recommendation from their FSL or SDL, and, in some instances, pass a written test — does not negate the fact that lineworkers will not be permitted to progress or even to take the test absent a positive recommendation from the WF-Ls. See, *Sheraton Universal Hotel*<sup>62</sup> (authority to recommend against hiring a candidate can establish supervisory authority); *Berger Transfer & Storage*<sup>63</sup> (supervisory status found where a salesman's recommendation to hire a candidate was followed by interviews with company officials, but his recommendation against hiring a candidate was normally final). While these cases involved recommendations against hiring, the principle applies with equal force to recommendations against promotion.

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<sup>57</sup> 273 NLRB 1677, 1689 (1985).

<sup>58</sup> 175 NLRB 871 (1969).

<sup>59</sup> 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

<sup>60</sup> 308 NLRB 101, 102 (1992).

<sup>61</sup> 330 NLRB 1334 (2000).

<sup>62</sup> 350 NLRB No. 84, slip op. at 5 (2007).

<sup>63</sup> 253 NLRB 5, 10 (1980), *enfd.* 678 F.2d 679 (7<sup>th</sup> Cir. 1982), supplemented by 281 NLRB 1157 (1986).

FSL Frazier testified that he has never asked a WF-L to change a Progression Appraisal, and there is no evidence that the FSL-Rs at the two other AWCs at issue have ever done so.<sup>64</sup> Frazier also testified that he has always followed the recommendations of the WF-Ls in the Progression Appraisal, and Hybsch testified that the FSLs, in general, follow the WF-Ls' recommendations regarding progression 80 percent of the time. *Venture Industries*<sup>65</sup> (department and line supervisors effectively recommend transfers or promotions where the managers follow the supervisors' recommendations about 80 to 90 percent of the time). The Union asserts that there are three instances in which FSLs failed to follow the recommendations of WF-Ls in Progression Appraisals, including (1) the 2003 incident in which former Derry FSL Lee failed to follow the recommendation of the Derry WF-Ls to promote lineworker Chris D'Amico on an accelerated basis, (2) the 2007 incident in which WF-L Jarry recommended a three- to six-month extension of Josh Turransky's status as a lineworker II learner, but former Milford FSL Nourse gave him only a three-month extension, and (3) the 2007 incident in which former Milford FSL Nourse failed to follow Jarry's subsequent oral recommendation that Turransky was ready to be a lineworker II, but not ready to be on call by himself. Assuming these examples actually could be characterized as a failure to follow the WF-Ls' recommendations,<sup>66</sup> I find that these three instances are too isolated to rebut the evidence that the FSLs follow the recommendations of the WF-Ls in the overwhelming majority of cases.

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<sup>64</sup> On this point, the Union asserts in its post-hearing brief that Frazier testified, at page 548 of the transcript, to the effect that he never specifically told a working foreman to rewrite an Appraisal, although he could remember an occasion or two where he had questioned an unsubstantiated score. In further testimony at pages 550-553 of the transcript, however, Frazier clarified that when he gave that testimony, he was referring to the annual Employee Development Reports rather than Progression Appraisals. He then testified that he has never asked a WF-L to change a Progression Appraisal.

<sup>65</sup> 327 NLRB 918 (1999).

<sup>66</sup> With respect to incident (1), I note that the incident involving D'Amico occurred five years ago and that D'Amico did progress, albeit not at the accelerated rate recommended by the Derry WF-Ls. With respect to incident (2), the recommendations to hold Turransky back, one WF-L recommended a three-month extension, Jarry recommended a three-to six-month extension, the other WF-Ls did not recommend a specific period of time for an extension, and the contract requires employees who fail to qualify for progression to be given an additional 50 percent of the usual time in that step, which is three months for lineworker II learners. In these circumstances, Nourse's decision to give Turransky the contractual three-month extension rather than the three-to-six month extension recommended by only one of four WF-Ls can hardly be characterized as a failure to follow the WF-Ls' recommendations. With respect to incident (3), involving Nourse's failure to follow Jarry's recommendation that Turransky should not be on call, I note that none of the WF-Ls, including Jarry, made such a recommendation in their written Progression Appraisals. Further, in the absence of evidence that any WF-Ls other than Jarry made a similar oral recommendation to Nourse, there is no evidence that Jarry was not in the minority.

In concluding that the WF-Ls' recommendations are effective, I am mindful that the Board has consistently applied the principle that authority effectively to recommend generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. *Children's Farm Home*.<sup>67</sup> Here, Frazier testified that he has limited opportunities to observe the lineworkers himself, as he gets out into the field only about 20 times a year, and that he relies 90 percent on the information provided in the WF-Ls' Progression Appraisals to determine whether he, himself, will recommend progression on the Supervisory Progression Appraisal form.<sup>68</sup> Because the FSL-Rs in Milford and Derry, unlike Frazier, are not themselves former lineworkers or WF-Ls, it would appear that they themselves would have even less ability than Frazier to evaluate the readiness of the lineworkers to progress and must, necessarily, rely heavily on the recommendations of the WF-Ls. While it is true there is evidence that, in one instance, former FSL Nourse recommended the extension of lineworker Turransky's qualifying period for three months based, in part, on his own observation, as well as on the WF-Ls' Progression Appraisals, the weight of the evidence suggests that the FSLs rely primarily on the WF-Ls' recommendations and do not generally conduct an independent investigation.<sup>69</sup>

In concluding that the WF-Ls effectively recommend the promotion of lineworkers within the lineworker progression, I do not rely on their role in completing the Work Experience/Comprehension forms, in which they assess the lineworkers' skills in various areas, but make no specific recommendation regarding the lineworkers' readiness to progress.

Further, in finding that the WF-Ls effectively recommend promotions, I do not rely on their role in recommending the promotion of lineworkers to WF-L positions. First, the record fails to demonstrate that their recommendations in these matters have been routinely followed. More important, although the FSLs receive input from the WF-Ls, either in the form of recommendations on the "Working Foremen Selection Process" form for candidates from their own AWCs, or in the form of Employee Development Reports for candidates from other AWCs,<sup>70</sup> the FSL and, possibly, the SDL always interview the candidates themselves and, thus, always independently investigate their suitability. The Board has held that where admitted supervisors participate in the interview process, it cannot be said that the employees whose status is at issue have

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<sup>67</sup> 324 NLRB 61 (1997).

<sup>68</sup> The balance of the input he considers includes matters such as attendance information.

<sup>69</sup> While I am aware, as noted by the Petitioner in its brief, that this is the only Supervisory Lineworker Progression Appraisal Justification form contained in the record, I draw no conclusion one way or the other from that fact.

<sup>70</sup> I note that Employee Development Reports do not include recommendations for promotion to WF-L.

authority to effectively recommend hiring. *Ryder Truck Rental, Inc.*<sup>71</sup> While this case, and others like it, again, involve authority to recommend hiring, I find that the principle applies with equal force when admitted supervisors interview candidates for promotion.

### **Responsible Direction**

In *Oakwood Healthcare, Inc.*, the Board recently refined its analysis of the terms “responsibly direct,” and “independent judgment” in assessing supervisory status.<sup>72</sup> With respect to “responsible direction,” the Board explained in *Oakwood* that, if a person has “men under him” and if that person decides which job shall be undertaken or who shall do it, that person is a supervisor, provided that the direction is both “responsible” and carried out with independent judgment. For direction to be “responsible,” the person directing the oversight of the employee must be accountable for the performance of the task by the other. To establish accountability, it must be shown that the employer delegated to the putative supervisors authority to direct the work and take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisors if they do not take these steps.<sup>73</sup>

Finally, the Board held in *Oakwood* that to establish that an individual possesses supervisory authority with respect to any of the statutory functions, the individual must also exercise independent judgment in exercising that authority, which depends on the degree of discretion with which the function is exercised. “[T]o exercise independent judgment, an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.”<sup>74</sup> “[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.”<sup>75</sup> The Board also stated that the degree of discretion exercised must rise above the “routine or clerical.”<sup>76</sup>

I find that the WF-Ls direct the work of the lineworkers. In this regard, they instruct lineworkers during tailboard discussions how to perform the jobs safely and properly. They determine, in some instances, the sequence of jobs, the sequence of tasks to be performed on a job, and the design of the jobs, all of which may affect the

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<sup>71</sup> 326 NLRB 1386, 1387 fn. 9 (1998).

<sup>72</sup> 348 NLRB No. 37, slip op. at 4 (2006).

<sup>73</sup> *Id.*, slip op. at 5-7.

<sup>74</sup> *Id.*, slip op. at 8.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*



directions they give to the lineworkers. They assign tasks to the lineworkers, determining whether they will work in the bucket or on the ground, and determining which tasks they will perform in the bucket. They determine whether the lineworkers will continue to work in inclement weather or perform other duties in the garage.

I find that the WF-Ls are accountable for the performance of the lineworkers in their crews and, therefore, direct them responsibly. Thus, WF-Ls are responsible for training employees, enforcing safety rules, and ensuring that prescribed procedures (such as switching and tagging procedures) are followed. The WF-Ls receive an annual appraisal in which their superiors rate them numerically with respect to meeting various goals, including certain measures of crew performance, such as line crew productivity, the system's average restoration time, and customer satisfaction for the AWC. The WF-Ls receive annual merit raises that vary depending on the scores in their Final Reviews.<sup>77</sup> Thus, the WF-Ls clearly face a prospect of positive or negative monetary consequences as a result of their appraisals on these factors. *Golden Crest Healthcare Center*.<sup>78</sup> I note that, in finding that the WF-Ls are held accountable for the performance of their crews, I do not rely on the disciplinary letters submitted into evidence by PSCNH, because it appears that the WF-Ls involved in those incidents were disciplined for their own poor performance rather than for performance failures by their crew members.<sup>79</sup>

Finally, I find that the WF-Ls exercise a sufficient degree of independent judgment in responsibly directing the lineworkers to warrant a finding of supervisory status on this basis. Thus, WF-L Tim Tsantoulis testified that he uses his own judgment to decide where to set up his truck to perform the tasks he has to do, where or how to install jumpers when doing a pole transfer, and which tasks to perform first on a particular job. WF-Ls must also consider questions of efficiency and safety in deciding whether or not to perform a particular job in a manner different from the manner described in the job package. This may involve deciding whether or not to use different materials or to perform additional work or less work. Further, in assigning tasks to the lineworkers on their crews, because of their responsibility for training lineworkers, WF-Ls are supposed to look for opportunities for lineworkers to practice skills in which they are not yet proficient. Accordingly, WF-Ls must assess the skills of the lineworkers on their crews and make assignments based upon those assessments. WF-Ls also make the decision as to whether or not their crews shall stop work due to inclement weather, and,

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<sup>77</sup> I note that WF-Ls also receive quarterly incentive bonuses that are based 50 percent on safety, and that they receive no quarterly incentive payout if they have been disciplined for safety reasons that quarter. The record, however, is insufficient to determine whether these bonuses are in any way connected to the performance of the WF-Ls' subordinates. Accordingly, I do not rely on them in making a determination as to the accountability of WF-Ls for the actions of their subordinates.

<sup>78</sup> 348 NLRB No. 39, slip op. at 5 (2006).

<sup>79</sup> Thus, the WF-Ls were disciplined for failing to provide an adequate tailboard briefing, violating a tagging rule themselves, and/or directing a lineworker to perform an unsafe act.

in the event of a difference of opinion between a WF-L and his crew, the WF-L makes the final decision. Based upon the foregoing, I conclude that the WF-Ls' direction of lineworkers involves a degree of discretion on their part that rises above the routine or clerical and requires the exercise of independent judgment. Cf. *Network Dynamics Cabling, Inc.*<sup>80</sup> (Respondent failed to show that crew chief's direction of employees entailed the exercise of independent judgment, where there was no evidence that he considered the relative skills of employees in shifting them from one task or crew to another).

### **Assignment of Overtime Work and Preparation of Time Sheets**

In finding the WF-Ls to be statutory supervisors, I do not rely on their role in authorizing overtime or preparing time sheets. The Board announced in *Oakwood Healthcare* that it construes the term "assign" to include appointing an employee to a time (such as a shift or overtime period).<sup>81</sup> Here, the WF-Ls' power to authorize an hour or more of overtime work in order to complete a job does not confer supervisory status, because the WF-Ls cannot require lineworkers to work overtime. It is well established that the party seeking to establish supervisory authority must show that the putative supervisor has the ability to *require* that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to *request* that a certain action be taken. *Golden Crest Healthcare Center*.<sup>82</sup> To the degree that WF-L's may require a lineworker to work overtime for a trouble call, it requires no independent judgment to select the lineworker with the least amount of overtime, as required by the collective-bargaining agreement. Nor does the WF-Ls' role in preparing the lineworkers' timesheets demonstrate their supervisory status. The Board has consistently held that the authority to verify employees' time cards is routine and clerical and does not constitute supervisory authority to assign. *Golden Crest Healthcare Center*.<sup>83</sup>

### **Discipline**

The record fails to establish, nor does PSCNH contend, that the WF-Ls effectively recommend discipline by virtue of their role in the accident investigation teams. As noted above, the role of the accident investigation teams is limited to determining whether a safety rule has been violated. The teams, which may also include nonsupervisory field technicians, do not issue discipline or make any recommendations as to whether discipline should be imposed.

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<sup>80</sup> 351 NRLB No. 98, slip op. at 4 (2007).

<sup>81</sup> *Supra*, 348 NLRB No. 37, slip op. at 4.

<sup>82</sup> *Supra*, slip op. at 3.

<sup>83</sup> *Id.*, slip op. at 4 fn. 10.

PSCNH asserts in its post-hearing brief that the WF-Ls' participation in accident investigation teams is a secondary indicium of supervisory authority, because the teams' findings that a safety rule has been violated frequently result in disciplinary action. It appears that, because the evidence falls short of establishing that the WF-Ls possess full-blown Section 2(11) authority to discipline or effectively recommend discipline, PSCNH suggests that some lesser degree of authority in this area may be considered, nonetheless, as secondary evidence of supervisory authority. I find this argument to be unpersuasive. Authority to discipline or effectively recommend discipline is a primary rather than a secondary indicium of supervisory status, which the WF-Ls either possess or do not possess. If the evidence is insufficient to demonstrate that the WF-Ls possess primary authority to discipline or effectively recommend discipline, PSCNH may not buttress its case by asserting that a lesser role in this area is evidence of a secondary indicium.

### **Role in Acting as Substitute Supervisors**

In concluding that the WF-Ls are statutory supervisors, I do not rely on the fact that they substitute for SDLs, FSLs, or FSL-Rs when they are on vacation or otherwise absent. It is well established that an employee who substitutes for a supervisor may be deemed a supervisor only if that individual's exercise of supervisory authority is both regular and substantial. The Board has held that assumption of supervisory duties during vacation periods or other unscheduled occasions is irregular and sporadic and, therefore, insufficient to establish supervisory authority. *Quality Chemical, Inc.*,<sup>84</sup> *Hexacomb Corp.*<sup>85</sup>

### **Lineworkers as Designated in Charge**

The Union raises the fact that lineworkers fulfill some of the same responsibilities as WF-Ls when they act, in the absence of a WF-L, as the lineworker "designated in charge" of a crew. To the extent this is relevant to an argument that the WF-Ls' duties in directing their crews are, therefore, not supervisory, it does not negate the WF-Ls' supervisory status based on their role in effectively recommending the progression of lineworkers, which is critical to my determination of their supervisory status, because, unlike WF-Ls, lineworkers acting as designated in charge do not complete Progression Appraisal forms. In any event, while the fact that lineworkers sometimes substitute for WF-Ls may be relevant to an argument that the lineworkers are themselves statutory supervisors, depending on the regularity of the substitution, it does not demonstrate that the duties of the WF-Ls are not supervisory in nature.

### **Secondary Indicia**

My finding that the WF-Ls are statutory supervisors is buttressed by certain secondary indicia. In this regard, they are more highly compensated than the lineworkers

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<sup>84</sup> 324 NLRB 328, 331 (1997).

<sup>85</sup> 313 NLRB 983, 984 (1994).

with respect to their wages and incentive bonuses, attend supervisory training and some management meetings, and, unlike the lineworkers, have a designated office with desks.

Accordingly, based upon all the foregoing, I find that the WF-Ls are supervisors within the meaning of Section 2(11) of the Act and, accordingly, the petition must be dismissed.<sup>86</sup>

### **ORDER**

**IT IS HEREBY ORDERED** that the petition is dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision, clarification of Bargaining Unit, and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 3, 2008.

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select

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<sup>86</sup> In reaching my determination, I do not rely on various cases cited by PSCNH in its post-hearing brief, in which the 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Circuit Courts of Appeal reversed the Board's decisions. The Board has long maintained that it is not bound by the decisions of the circuit courts except in the circuit where the case originated, unless the Supreme Court addresses the issue. *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004); *Washington Nursing Home*, 321 NLRB 366 (1996), citing *Waco, Inc.*, 273 NLRB 746, 749 (1984); *Iowa Beef Packers*, 144 NLRB 615, 616 (1963).

the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Rosemary Pye

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Dated at Boston, Massachusetts,  
this 20<sup>th</sup> day of March, 2008